IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re application of: | Confirmation No.: 7330 |
| Mauler-Machnik *et al.* | Art Unit: 1616 |
| Appl. No.: 10/576,181 | Examiner: Brooks, Kristie L. |
| Filed: July 26, 2006 | |
| For: **Fungicidal Active Combinations Spiroxamine, Prothioconazole and Tebuconazole** | |

# Declaration of Peter Dahmen Under 37 C.F.R. §1.132

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

I, Peter Dahmen, of Altebrücker Str. 61, 41470 Neuss, Germany, a citizen of Germany, hereby declare:

1. that I am a biologist having studied at the University of Bonn, Germany;

2. that I received the degree of Dr. agr. at the University of Bonn, Germany;

3. that I entered the employ of Bayer Aktiengesellschaft, Leverkusen, in 1991, where I have been employed in the department of Biology Herbicides, that after the spin-off from Bayer CropScience AG I am now employee of this company in the department of Global Biology Fungicides;

4. that I have specialized in the field of fungicide research;

5. that the following tests have been carried out under my supervision and control.

**Comparative Test**

*Fusarium graminearum* test (barley) / preventive

| | | |
|---|---|---|
| Solvent: | 49 | parts by weight of N,N-dimethyl acetamide |
| Emulsifier: | 1 | parts by weight of alkylaryl polyglycol ether |

To produce a suitable preparation of active compound, 1 part by weight of active compound or active compound combination is mixed with the stated amounts of solvent and emulsifier, and the concentrate is diluted with water to the desired concentration.

To test for preventive activity, young plants are sprayed with the preparation of active compound combination at the stated rate of application. After the spray coating has been dried, the plants are sprayed with a suspension of spores of *Fusarium graminearum*. The plants are placed in a greenhouse chamber under a translucent incubation hood at a temperature of 22°C and a relative atmospheric humidity of 100 %.

The test is evaluated 5 days after the inoculation. 0 % means an efficacy which corresponds to that of the control, while an efficacy of 100 % means that no disease is observed.

Results: *Fusarium graminearum* test (barley) / preventive

| Active compound combination | Mixing ratio | Application rate of active compound in ppm | Efficacy in % |
|---|---|---|---|
| Known from WO 96/41533:<br>Tebuconazole +<br>Propiconazole +<br>Spiroxamine | 3,9 : 1 : 5.8 | 167 + 43 + 250 | 40 |
| According to the invention:<br>Tebuconazole +<br>Prothioconazole +<br>Spiroxamine<br>(Mixing ratio identical to ratio in WO 96/41533) | 3,9 : 1 : 5.8 | 167 + 43 + 250 | 80 |
| According to the invention:<br>Tebuconazole +<br>Prothioconazole +<br>Spiroxamine | 1 : 1 : 2.5 | 100 + 100 + 250 | 100 |

| Active compound combination | Mixing ratio | Application rate of active compound in ppm | Efficacy in % |
|---|---|---|---|
| Known from WO 96/38040:<br>Tebuconazole +<br>Triadimenol +<br>Spiroxamine | 3,9 : 1 : 5.8 | 167 + 43 + 250 | 60 |
| According to the invention:<br>Tebuconazole +<br>Prothioconazole +<br>Spiroxamine<br>(Mixing ratio identical to ratio in WO 96/41533) | 3,9 : 1 : 5.8 | 167 + 43 + 250 | 80 |
| According to the invention:<br>Tebuconazole +<br>Prothioconazole +<br>Spiroxamine | 1 : 1 : 2.5 | 100 + 100 + 250 | 100 |

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The undersigned declarant declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signed at Monheim, Germany,

2008-10-31 Pet Da

Date Dr. Peter Dahmen